

**70C-7-106 Unconscionability.**

- (1) With respect to a consumer credit agreement, if the court finds the agreement or any part of the agreement to have been unconscionable at the time it was made, the court may refuse to enforce the agreement, or it may enforce the remainder of the agreement without the unconscionable clause if that will avoid any unconscionable result.
- (2) If it is claimed or appears to a court that a consumer credit agreement or any part of it may be unconscionable, the parties shall be afforded a reasonable opportunity to present evidence as to its setting, purpose, and effect to aid the court in making the determination.
- (3) For the purposes of this section, a charge or practice expressly permitted by this title is not in itself unconscionable.
- (4) If the court as a matter of law finds a consumer credit agreement or any part of the agreement to have been unconscionable, then in addition to the relief provided for in Subsection (1), the party in violation of this section is liable and the debtor may recover from it a penalty in an amount determined by the court of:
  - (a) not less than \$100 nor more than \$5,000; and
  - (b) the cost of the action together with a reasonable attorney's fee.
- (5) The penalties provided for in Subsection (4) may not be imposed upon an assignee of the creditor's rights in a consumer credit contract found as a matter of law to be unconscionable in whole or in part unless the debtor establishes by a preponderance of the evidence that the assignee knew the agreement was a consumer credit contract at the time the assignment occurred and also knew of the facts or circumstances on which the court based its finding of unconscionability.
- (6) No class action may be brought under this section except for injunctive or declaratory relief.
- (7) Nothing contained in Subsection (6) prevents the recovery of penalties by a debtor as provided in Subsection (4).

Enacted by Chapter 159, 1985 General Session